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7 *Successor Receiver*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE
16 RIVER ADVISORS, LLC; SRA
17 MANAGEMENT ASSOCIATES,
18 LLC; FRANK GREGORY
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III
22 LLC; FELIX INVESTMENTS, LLC;
23 MICHELE J. MAZZOLA; ANNE
24 BIVONA; CLEAR SAILING
25 GROUP IV LLC; CLEAR SAILING
26 GROUP V LLC,

27 Relief Defendants.
28

Case No. 3:16-cv-01386-EMC

**SEVENTH INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSION RECEIVER, DIAMOND
McCARTHY LLP, MILLER KAPLAN
ARASE LLP AND SCHINNER & SHAIN
LLP FROM JULY 1, 2020 THROUGH
SEPTEMBER 30, 2020**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

I. Relief Requested

Pursuant to Local Rule 7-11, through this motion, the Receiver seeks approval of compensation and reimbursement of expenses for herself and her professionals for the period of July 1, 2020 through September 30, 2020 (“Motion Period”) in the following amounts:

Receiver: Fees \$83,732.00¹; Costs \$49.70.

Diamond McCarthy LLP (“Diamond McCarthy”): Fees \$82,500.50; Costs \$508.60.

Miller Kaplan Arase LLP (“Miller Kaplan”): Fees \$25,996.40; Costs \$99.03

Schinner & Shain LLP (“Schinner”): Fees: \$11,731.50.

The Motion requests authority to pay prior holdback amounts to the Receiver’s professionals as follows:

Diamond McCarthy	\$26,511.32
Miller Kaplan	\$11,772.96
Schinner & Shain	\$3,761.24

This Motion is supported by the Declarations of the Receiver, Christopher Sullivan of Diamond McCarthy, Julia Damasco of Miller Kaplan, and Fred Koenen of Schinner.

The Receiver has conferred with counsel for the Securities and Exchange Commission (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of judgment against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

II. Previous Fee Motions

Fees and expenses have previously been granted as follows:

Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33 and Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees subject to 20% hold back).

Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of \$185.93 and Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees subject to 20% hold back).

¹ The Receiver has agreed to a holdback of 20% of this amount and therefore request authority to pay \$66,985.60.

Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and costs of \$542.73 and Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees subject to 20% hold back).

Order on Fourth Interim Motion (Dkt. No. 567): Receiver fees in the amount of \$50,187.30 and costs of \$27.00 and Diamond McCarthy fees of \$12,550.00 (fees subject to 30% hold back); Miller Kaplan fees of \$42,465.60 and Schinner fees of \$5,044.96 (fees subject to 20% holdback).

Order on the Fifth Interim Motion (Dkt No. 615): Receiver fees in the amount of \$75,058.00 and costs of \$145.00 and Diamond McCarthy fees of \$32,454.00 (fees subject to 20% holdback); Schinner fees of \$2,450.00 and costs of \$622.06.

Order on Sixth Interim Motion (Dkt. No. 621): Receiver fees in the amount of \$43,904.00 and costs of \$388.39, Diamond McCarthy fees of \$29,398.90 and costs of \$919.78, and Miller Kaplan fees of \$16,399.20 (subject to 20% hold back); Schinner fees of \$900.

As of September 30, 2020, there are fee holdbacks from the prior fee applications in the following amount:

Sherwood Partners, Former Receiver	\$144,627.50
Kathy Bazoian Phelps, Receiver	\$73,322.58
Diamond McCarthy	\$26,511.32
Miller Kaplan	\$11,772.96
Schinner & Shain	\$3,761.24
Total	\$259,995.60

As of September 30, 2020, the Receiver was currently holding cash in the following amounts in the following accounts:

Checking	\$129,855.30
Money Market	\$94,410.77
Anna Bivona Funds	\$502,420.70
Plan Fund checking	\$250,000.00
Tax Holding checking	\$250,000.00
Plan Fund ICS	\$2,300,543.77
Tax Holding ICS	\$1,056,767.38

1 Since September 30, 2020, the Receiver has sold stocks generating total cash proceeds of
 2 \$9,854,110, of which \$9,765,512 is for the Plan Fund available to pay administrative claims.²

3 **III. Case Status**

4 The Court approved the Receiver's Plan of Distribution ("Plan") on May 25, 2020 (Dkt.
 5 No. 613). Upon the Plan's approval, the Receiver began taking the steps necessary to implement
 6 the Plan, including preparing distribution schedules and communicating with investors regarding
 7 their account information. The Receiver worked with Miller Kaplan to address the proper manner
 8 of calculating the sale and distributions of the publicly traded securities. The Receiver filed a
 9 motion seeking Court authority to sell securities to fund the Plan Fund and the Tax Holding
 10 Account and to make interim distributions to investors holding allowed claims. The motion was
 11 approved on July 20, 2020 (Dkt. No. 619), and the Receiver has actively been engaged in the
 12 process of making the first interim distributions of publicly traded securities, which is nearly
 13 complete. The Receiver also sought authority to sell the necessary Palantir shares upon notification
 14 of Palantir's direct listing, and the sales process was completed in early October 2020. The
 15 Receiver with the assistance of Diamond McCarthy continues to prosecute the lawsuit against Ben
 16 Sabrin for the return of 6,250 shares of MongoDB, or the value thereof, that he owes to the estate.

17 As of September 30, 2020, the receivership estate has approximately \$129,855 in cash on
 18 hand in a checking account, \$94,410 in the money market account, \$502,420 in the segregated
 19 Anna Bivona funds, \$2,550,543 in the Plan Fund, and \$1,306,767 in the Tax Holding Account.³
 20 There are known accrued expenses and unpaid expenses of \$204,617.73 through September 30,
 21 2020 for third quarter fees and expenses, and holdbacks of \$259,994.80. Attached to the
 22 Declaration of the Receiver as Exhibit "1" is a financial summary showing the cash status of the
 23 estate as of September 30, 2020. Funds in the amount of \$73,969.85 representing second quarter

24 _____
 25 ² As a result of the Palantir sales, the Plan fund now contains in excess of \$12.3 million which will
 26 be used to pay the Class 3 claims in the amount of \$9,652,191 and administrative claims. The
 27 Receiver has seeking to make an interim distribution at this time to Class 3 claimants in the amount
 28 of 80% of their claims, or \$7,721,753. While the remainder is reserved until the tax liabilities of
 the estate may be finalized, the Receiver is hopeful that Class 3 claims will be paid in full.

³ Due to an administrative oversight, an additional \$3,600 was transferred to the Tax Holding
 Account instead of to the Plan Fund after the sale of publicly traded securities. The Receiver has
 since transferred \$3,600 from the Tax Holding ICS to the Plan Fund ICS to correct the oversight.

fees and expenses were disbursed during this period. The Standardized Fund Accounting Report required by the SEC for the third quarter 2020 is attached to the Receiver's Declaration as Exhibit "2."

IV. The Receiver's Fee Request

As detailed in the Declaration of the Receiver, pursuant to the Receiver's proposal for her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has established separate billing categories for services provided. For services provided with respect to legal issues, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating significant savings to the estate. The Receiver has agreed to charge \$130.00 per hour for herself and her assistants for administrative services. The billing statements itemizing the services provided and expenses incurred are contained in Exhibit "3" attached to the Declaration of the Receiver. The Receiver incurred costs in the amount of \$49.70 and performed services for each category as follows:

Matter	Hours	Fees
Case Administration (2598-00012)	22.10	\$9,392.50
Administrative Services (2598-00012)	58.90	\$7,657.00
Asset Analysis and Recovery (2598-00014)	22.70	\$9,647.50
Plan Implementation (2598-00016)	134.20	\$57,035.00
TOTAL		\$83,732.00

V. Diamond McCarthy's Fee Request

As detailed in the Declaration of Christopher Sullivan, Diamond McCarthy has established billing categories for tasks performed and has significantly discounted its billing rates with senior attorneys capping their hourly rate at \$425.00. The billing statements itemizing the services provided and expenses incurred are attached as Exhibit "4" to the Sullivan Declaration. Diamond McCarthy incurred expenses of \$508.60 and performed services for each category are as follows:

Matter	Hours	Fees
Plan Implementation (2622-00013)	168.40	\$71,570.00
Asset Analysis and Recovery (2622-00015)	28.10	\$10,930.50

TOTAL		\$82,500.50
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VI. Miller Kaplan's Fee Request

As detailed in the Declaration of Julia Damasco and the billing statements attached as Exhibit "5" to her Declaration, Miller Kaplan has incurred \$25,996.40 in fees and \$99.03 in costs in connection with providing tax services to the Receiver. The services performed by Miller Kaplan were necessary in implementing the Plan and in preparing the 2016 through 2019 taxes for the Qualified Settlement Fund.

VII. Schinner's Fee Request

Attached as Exhibit "6" to the Declaration of Fred Koenen are billing statements itemizing \$11,731.50 in fees sought for services performed by Schinner. Schinner provided necessary and beneficial securities law services to the Receiver.

VIII. Request to Pay Holdback Amounts

The Receiver has met and conferred with the SEC regarding the prior holdback amounts in the case given the strong cash position of the case as of this time. The SEC does not object to the Receiver's proposed payment of the holdbacks for the professionals but has requested that the prior hold back amounts for the Receiver and the former receiver, Sherwood Partners, remain in place as of this time. Accordingly, the Receiver requests authority to pay the following holdback amounts of her professionals:

Diamond McCarthy	\$26,511.32
Miller Kaplan	\$11,772.96
Schinner & Shain	\$3,761.24

WHEREFORE, the Receiver seeks entry of an order granting this motion in all respects.

Dated: November 4, 2020

By: /s/Kathy Bazoian Phelps

Kathy Bazoian Phelps, Receiver